

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart L – ACEP-WRE Ranking Criteria

528.110 Overview

The ACEP regulations provide that the State Conservationist will, in consultation with U.S. Fish and Wildlife Service (FWS) and the State Technical Committee (STC), rank applications for enrollment in the ACEP-WRE based on—

- (1) The likelihood of successful restoration of wetland functions and values, and maximizing wildlife benefits, taking into consideration the cost of restoration, protection, enhancement, maintenance, management, and the cost of acquiring the easement or 30-year contract.
- (2) The significance of the wetland functions and values.
- (3) The duration of a proposed enrollment, with permanent easements being given priority over nonpermanent easements or 30-year contracts.

528.111 Establishing ACEP-WRE Ranking Criteria

A. Ranking Purpose and Process Overview

- (1) The ranking process enables the State Conservationist to prioritize enrollment offers by determining applications that most merit enrollment. However, this process does not guarantee or entitle the applicant to funding.
- (2) The State Conservationist, with advice from the STC, establishes a weighted ranking process to prioritize all eligible applications, considering the factors described in this subpart. Give priority to those applications that provide the maximum wildlife benefits associated with restoration and protection of wetland functions and values, considering all associated acquisition and restoration costs and the duration of the enrollment.
- (3) The State Conservationist will develop a form to record the ranking criteria, develop a process to collect data, rank the applications, and select applications for funding. The ranking system's point spread should be sufficient to allow differentiation between applications.
- (4) The State Conservationist may develop multiple ranking forms or establish funding pools to address variability in habitat types offered for enrollment. The development of multiple ranking forms or funding pools may be necessary to facilitate enrollment of diverse habitat types that otherwise may be difficult to compare within a single set of ranking criteria. Funding pools also allow flexibility to ensure priority habitat types that would not compete as well with other habitat types may still be selected.
- (5) These State-developed ranking forms will be made available to the public through the State's ACEP-WRE Web page.

B. Ranking Criteria Overview

The ranking criteria for easements and 30-year contracts will emphasize—

- (i) The environmental benefits of enrolling the land.
- (ii) Cost effectiveness of enrolling the land to maximize the environmental benefits per dollar expended.
- (iii) Whether the landowner or others, are offering to contribute financially to the enrollment or restoration, to leverage Federal funds.
- (iv) The extent to which the purpose of the program would be achieved on the land.
- (v) Other factors issued by the Easement Programs Division (EPD).

C. Environmental Benefit Considerations

The ranking process will include consideration of the wetland functions and values as defined in subpart T of this manual, and—

- (i) Ranking criteria to assess the environmental benefits of enrolling the land, should include but are not limited to—
 - Habitat that will be restored for the benefit of migratory birds and wetland-dependent wildlife, including the diversity of wildlife species that will be benefitted or the life-cycle needs that will be addressed.
 - Habitat for threatened, endangered, or other at-risk species, including the planned extents and anticipated use of the restored habitats on the easement area, and diversity of at-risk species benefitted.
 - Protection or restoration of native vegetative communities.
 - Habitat diversity and complexity to be restored and protected on the enrollment area.
 - Extent of wetland losses within a geographic area, including wetlands generally or specific wetland types.
 - Proximity and connectivity to other protected habitats.
 - Extent of adjacent beneficial land uses.
 - Water quality protection or improvement.
 - Attenuation of floodwater flows.
 - Water quantity benefits through increased water storage in the soil profile or through groundwater recharge and consideration of proximity to impaired water bodies.
 - Carbon sequestration.
- (ii) The extent to which the original hydrology can be restored.
 - Hydrology restoration potential must comprise at least 50 percent of the potential points awarded for environmental benefit considerations.
 - To receive hydrology restoration ranking points, hydrology restoration or enhancement practices must provide hydrologic conditions suitable for the needs of the native wetland-dependent wildlife species that occurred in the area and appropriate for the wetland functions and values that existed prior to manipulation.
 - Hydrology restoration potential should be assessed based on physical site characteristics including:
 - Soil properties such as soil texture, soil structure, and soil drainage classes.
 - Landscape features such as geomorphic position, flooding frequency, slope and water table depths.
 - The source of hydrologic and the degree and type of hydrologic manipulation and the extent to which it can be restored.
- (iii) The likelihood that the site will retain its habitat functions and values after the enrollment period ends.

Note: The ranking process should consider the physical site conditions and ownership pattern that may result in some form of increased protection, such as a separate conservation easement or purchase agreement.
- (iv) Duration of the enrollment, with priority given to permanent easements over shorter-term enrollment options.

D. Economic Considerations

- (1) At a minimum, the ranking process should include the following economic considerations:
 - (i) Estimated easement or 30-year contract cost per acre, if appropriate.
 - (ii) Estimated restoration costs.
 - (iii) Partnership contributions that reduce NRCS costs will be reflected positively in the ranking process. The State Conservationist must ensure NRCS has financial control for the full amount of funding. When a landowner or other entity is offering to contribute funds for a part of the projected restoration or easement costs, the funds pledged to the program as a means of receiving favorable ranking, must be under NRCS financial control.
 - (iv) A cost-benefit comparison. Applications that have a lower cost per environmental benefit ratio will receive higher rankings.
 - (v) Potential near- and long-term management, repair, replacement, or operation and maintenance costs.
- (2) During the ranking process, cost factors may be estimated using comparable market value, geographic area rate caps, landowner offers, established restoration costs, and pledged partner contributions.

E. Special Considerations

States may also include special considerations in the ranking process, such as—

- (i) Priority geographic regions. The State Conservationist, with advice from the STC, has the authority to give priority to certain geographic regions of the State where restoration of wetlands may better achieve State and regional objectives. Additionally, an easement offer, in a priority geographic region, may be accepted before other individual easement offers that rank higher but are outside the priority region.

This policy provides an opportunity for the State Conservationist, in consultation with the FWS, to begin an ACEP-WRE initiative in an area that has been determined important for ACEP-WRE involvement, regardless of specific individual site ranking.

- (ii) Priority wetland habitat types. The State Conservationist, with advice from the STC, has the authority to prioritize certain habitat types to receive additional ranking consideration. Unique, rare, or declining habitat types, identified for protection, and restoration, may be identified, and prioritized in the State's ranking criteria.
- (iii) Applications in special water-quality target areas.
- (iv) Creating contiguous wetland areas under easement protection, such as along river corridors or within drainage districts.
- (v) Enhancing effective restoration of previously enrolled land.
- (vi) Reducing habitat fragmentation and boundary management problems.

Example: In-holdings in the conservation area would potentially exhibit marginal wetland functions, but, if enrolled, would enable substantial restoration and enhancement of the surrounding area.

- (vii) Promoting adjacent landowner participation.
- (viii) Enhancing long-term protection of previously restored wetlands. When a wetland has previously been restored, but not fully protected by an easement, as described in section 528.105G, the restoration will be considered a positive attribute in the ranking process.
- (ix) Excessive permitting requirements or permitting requirements that require excessive time to secure. Higher priority should be given to areas where successful restoration work will not be complicated by unusual permit problems.

Example: If there are State or local permitting processes that are complex and lengthy, the site may not warrant further consideration. At a minimum, the permit question should be fully incorporated into the site consideration.

- (x) The level of complexity for engineering design, practice application, and operation and maintenance.

Note: The State Conservationist, in consultation with the STC, may elect to establish a minimum easement size to ensure program objectives are achieved, to ensure easement management effectiveness, or improve program efficiency, as long as the minimum does not unintentionally exclude high-quality applications, such as critical habitat for endangered and threatened species, or prevent participation by limited-resource farmers and ranchers.

528.112 Ranking Process

A. The ranking process will be conducted as part of the onsite field investigations completed by NRCS (with the landowner and FWS, when available). NRCS may provide an opportunity for input from the State wildlife agency and the conservation district (CD), to determine eligibility of the proposed enrollment area and develop the preliminary restoration plan and preliminary wetland reserve plan of operations (WRPO).

B. Once the field evaluations are completed, the field office staff or the Wetland Implementation Team will submit the following information to the State office (See Subpart U, “Exhibits,” for a sample application checklist for submittal to State office):

- (1) Application for participation in the ACEP-WRE.
- (2) Copies of the landowner and land eligibility information (see subpart K).
- (3) Completed ranking form signed by an NRCS representative, including the landowner’s signature when available and input from FWS, conservation district, and State wildlife agency representative, if provided.
- (4) The amount of any voluntary landowner offer to accept a reduced per acre easement value, documented in writing and signed by the landowner.
- (5) A completed “Landowner Disclosure Worksheet” to initially document any unrecorded encumbrances and assess the potential presence of offsite and onsite conditions that would prevent successful restoration or pose an unacceptable risk to NRCS (See Subpart U, “Exhibits,” for landowner disclosure worksheet).
- (6) Completed “Hazardous Materials Field Inspection Checklist” and “Hazardous Materials Landowner Interview” (See Subpart U, “Exhibits,” for hazardous materials field inspection checklist and hazardous materials landowner interview).
- (7) National Environmental Policy Act documentation (Form NRCS-CPA-52, “Environmental Evaluation Worksheet”).
- (8) Other items specified on state application checklists, such as documentation of water rights.
- (9) Partnership pledges to provide financial assistance.
- (10) Plat map showing location and boundaries of offered area.
- (11) Preliminary WRPO, including—
 - (i) A clear objective and understanding about desired outcome of restoration activities.
 - (ii) An aerial plan map showing boundaries of offered acres, access right-of-way, existing land use, conservation practices, the location of planned restoration practices, planned habitats, and planned land use.
 - (iii) List of planned conservation practices, measures and activities, estimated quantities, and estimated costs.

(iv) A soils map.

C. Maps and practices identified in the preliminary WRPO and applicable worksheets will be developed using Customer Service Toolkit and stored in the National Conservation Planning database or other agency-approved conservation planning software.

528.113 Ranking and Selection

A. In general, applications should be selected as prioritized based on the outcome of the ranking process. However, the State Conservationist, in consultation with the STC, has the authority to establish priorities and circumstances under which the State Conservationist may select applications outside of a strictly applied ranked order. Circumstances that would warrant these selections may include but are not limited to the following:

- (1) Large Project Size.—If a high-ranking but unusually large project would consume a disproportionate amount of a State’s ACEP-WRE budget, the large project may be deferred until sufficient funds become available.
- (2) Insufficient Funds.—If sufficient funds are not available to select the next-highest-ranked offering, offerings may be passed over until the next fundable project is reached.
- (3) Augments Existing or Concurrent ACEP-WRE Acquisition Efforts in an Area.—Applications that may not rank high on their own merits but will contribute to the benefits of an existing or pending easement should be prioritized. Specifically, enrollments that further effective restoration and function of existing ACEP-WRE lands, reduce habitat fragmentation by protecting and restoring contiguous areas, resolve boundary issues, contribute to management, eliminate inholdings, or serve as a necessary buffer.
- (4) Rare, Unique, or Individual Habitats.—Allow for enrollment of wetland types that are ecologically significant but whose values may not be adequately captured through the established ranking system.
- (5) Emerging Issues.—Enrollment of specific habitat types or in habitats in targeted geographic areas may be warranted due to disasters, new science, or changing priorities when contribution to and consideration of these factors is not be sufficiently captured in the established ranking system.

B. All ACEP-WRE offers should be ranked; however, unique projects may be selected outside of the traditional rank order when the selection is warranted. These selections should be documented either through a separate rationale document or accounted for as a special circumstance captured within the ranking process itself. For example, ranking forms may include a “Special Circumstances or Initiative” option to allow points to be assigned, based on relative importance of the circumstance addressed by the application. Alternatively, letters of support or supplemental documentation supporting the enrollment of unique projects may be included as supporting documentation in the case file. The selection rationale should be documented, either on the ranking form, or in through supplemental documentation used in the selection process.